

**Department of State Health Services
Council Agenda Memo for State Health Services Council
June 23, 2011**

Agenda Item Title: Repeal of rules concerning noncommercial pesticide applicators involved in health-related pest control programs

Agenda Number: 4.c

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Division of Regulatory Services, Environmental and Consumer Safety Section, Policy, Standards, and Quality Assurance Unit was the licensing authority for noncommercial pesticide applicators in Texas. Due to House Bill 1530, 81st Legislature, Regular Session, 2009, the authority for licensing this category of noncommercial pesticide applicators was consolidated at the Texas Department of Agriculture (TDA) on September 1, 2009.

DSHS had been the regulatory authority for noncommercial pesticide applicators in Texas through licensure and enforcement. The rules governed municipalities and other units of government that provided health-related pest control activities such as aerial or broad spraying of pesticides to control vectors to prevent the possible and/or probable transmission of vector-borne disease (i.e. West Nile) to or between humans.

Summary:

The purpose of the repeal is to remove rules that are no longer required and eliminate duplication of those rules established by TDA.

The rules found in 25 Texas Administrative Code (TAC) Chapter 267, were promulgated to be effective on November 9, 1998, as a result of the Texas Pesticide Control Act, and the Texas Agriculture Code, which required DSHS to adopt rules to ensure the safe application of pesticides in health-related pest control programs. Due to HB 1530, the program was transferred to TDA as of September 1, 2009. License renewals requested after September 1, 2009, were directed to TDA for licensure. The pesticide industry will not be impacted by this rule repeal since the requirements for licensed noncommercial pesticide applicators have been transferred to TDA.

Key Health Measures:

Repeal of the rules will not change the current licensing of noncommercial pesticide applicators since the licensing responsibility has already transferred to TDA. The expected outcome of repealing these rules is to eliminate confusion caused by having outdated rules in the DSHS rule base.

Summary of Input from Stakeholder Groups:

A notice was posted on the DSHS website at <http://www.dshs.state.tx.us/pesticide/default.shtm> that the program had been transferred to TDA and a link to TDA was provided for stakeholders. Stakeholders were in favor of the transfer to TDA.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4.c.

Approved by Assistant Commissioner/Director: Kathryn C. Perkins, R.N., M.B.A. **Date:** 5/23/2011

Presenter: Paula Anderson, R.S, M.P.H. **Program:** Policy/Standards/Quality Assurance **Phone** 834-6788
Manager, Public Health Unit, Environmental and Consumer **No.:**
Sanitation and Consumer Safety Section
Product Safety Group

Approved by CCEA: Carolyn Bivens **Date:** 5/20/11

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 267. Pesticide Applicators
Repeals §§267.1 – 267.17

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§267.1 - 267.17, concerning noncommercial pesticide applicators involved in health-related pest control programs.

BACKGROUND AND PURPOSE

The repeal of §§267.1 - 267.17 complies with House Bill (HB)1530, 81st Legislature, Regular Session, 2009, which amended the Agriculture Code, Chapter 76, and transferred the noncommercial pesticide applicators licensing authority from the department to the Texas Department of Agriculture (TDA), effective September 1, 2009. License renewals were approved up to September 1, 2009, and individuals requesting license renewals after September 1, 2009, were directed to TDA for licensure.

SECTION-BY-SECTION SUMMARY

The repeal of §§267.1 - 267.17 is consistent with the legislation transferring all regulatory authority for noncommercial pest control from the department to the TDA, and will eliminate duplication of licensing rules for noncommercial health-related pesticide applicators.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed, because these rules are no longer necessary with the program transfer from the department to the TDA.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Susan Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that there will be no effect on small businesses or micro-businesses resulting from the proposed repeal of the sections. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are impacted by the repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the repeals are in effect, the public will benefit by eliminating duplicate rule requirements resulting from amendments incorporated into the Agriculture Code, Title 5, Subtitle E, Chapter 76, Pesticide and Herbicide Regulation, §76.102, referring to agencies responsible for licensing pesticide applicators by HB 1530.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal for repeal will only remove rule duplication; and protection of the environment and/or reduction of risks to human health from environmental exposure will continue to be enforced under the Texas Department of Agriculture.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Paula Anderson, Public Health Sanitation and Consumer Product Safety Group, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to paula.anderson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are proposed under HB 1530, which authorizes the Texas Department of Agriculture to promulgate rules for the application of pesticides under 4 Texas Administrative Code, Chapter 7, Pesticides, Subchapter H, Structural Pest Control Service; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation

and provision of health and human services by the department and administration of Health and Safety Code, Chapter 1001.

The repeals affect the Texas Pesticide Control Act, Agriculture Code, Chapter 76; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

Sections for repeal.

- §267.1. Introduction.
- §267.2. Definitions.
- §267.3. Fees.
- §267.4. Application Procedures.
- §267.5. Authorized Pesticide Users.
- §267.6. Enforcement.
- §267.7. Applicator Certification.
- §267.8. Noncommercial Pesticide Applicator Recertification.
- §267.9. Expiration and Renewal of Licenses.
- §267.10. Operating without a License.
- §267.11. Records.
- §267.12. Inspection of Equipment.
- §267.13. Complaint Investigation.
- §267.14. Administrative Penalty.
- §267.15. Use Inconsistent with Label Directions.
- §267.16. Supervision.
- §267.17. Processing Applications.

Proposed Repealed Language
~~Strikethrough= repealed text~~

~~§267.1. Introduction~~

~~(a) Purpose. This chapter implements the Texas Pesticide Control Act, Texas Agriculture Code, which requires the department to adopt rules to ensure the safe application of pesticides in health-related pest control programs.~~

~~(b) Policy. These sections are compatible with federal and state laws regarding pesticide applications, encourage integrated pest management practices, and require continuing education.~~

~~(c) Scope. These sections apply to employees of the United States Government, state, county, city, mosquito control districts, or other political subdivisions of the state who serve as noncommercial pesticide applicators in the categories of vector control, rodent control, sanitation, and demonstration and research.~~

~~§267.2. Definitions~~

~~The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Act—Texas Pesticide Control Act, Texas Agriculture Code, Chapter 76.~~
- ~~(2) Administrator—The department employee designated as the administrator of licensure activities authorized by the Act.~~
- ~~(3) Applicant—A person who applies for licensure under the Act.~~
- ~~(4) Commissioner—The Texas Commissioner of Health, or his designee.~~
- ~~(5) Department—Department of State Health Services.~~
- ~~(6) EPA—United States Environmental Protection Agency.~~
- ~~(7) FAA—Federal Aviation Administration.~~
- ~~(8) General-use pesticide—Any pesticide product whose use is not restricted or limited by the United States Environmental Protection Agency or the Texas Department of Agriculture.~~
- ~~(9) Health-related pest control—The inspection and/or control of pests to prevent the possible and/or probable transmission of vector-borne disease to or between humans.~~
- ~~(10) Label—The written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.~~

~~(11) Labeling—A label or any other written, printed, or graphic matter:~~

~~(A) accompanying the pesticide at any time; or~~

~~(B) to which reference is made on a label or in literature accompanying or referring to a pesticide.~~

~~(12) Licensed pesticide applicator—An employee of the United States Government, state, county, city, mosquito control district, or political subdivision of the state who is licensed by the Texas Department of Health as a noncommercial pesticide applicator in accordance with the provisions of the Texas Pesticide Laws, Texas Agriculture Code, Chapter 76, and the rules promulgated thereunder, in the categories of:~~

~~(A) vector control;~~

~~(B) rodent control;~~

~~(C) sanitation; and~~

~~(D) demonstration and research.~~

~~(13) Restricted use pesticide—Any pesticide product classified for restricted or limited use by the Administrator of the United States Environmental Protection Agency.~~

~~(14) State limited use pesticide—Any pesticide product classified for restricted or limited use by the Texas Commissioner of Agriculture.~~

~~(15) Seasonal employee—An individual hired for peak mosquito control periods who acts under the direct supervision of a department licensed pesticide applicator in the vector control category.~~

~~§267.3. Fees~~

~~(a) Term, Expiration, and Fee Schedule. Prior to January 1, 2005, the term of all licenses is one year and expires on the anniversary of the effective date, unless renewed. Effective January 1, 2005, the term of all licenses is two years. Some licenses will be renewed for a one-year term in 2005 in a manner to be determined by the department and two years thereafter. The schedule of fees is as follows:~~

~~(1) application fee—\$10;~~

~~(2) category examination fee—\$50;~~

~~(3) category reexamination fee—\$50~~

~~(4) initial category license fee:~~

~~(A) for a one-year term is \$375; and~~

~~(B) for a two-year term is \$750.~~

~~(5) renewal category license fee:~~

~~(A) for a one-year term is \$375; and~~

~~(B) for a two-year term is \$750.~~

~~(6) late fee—\$25;~~

~~(7) license and/or identification card replacement fee—\$25; and~~

~~(8) continuing education course review fee—\$25 per course.~~

~~(b) Texas Online Fees. The department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with processing license applications specified under this subchapter through Texas Online, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of Texas Online Project).~~

~~(c) All fees are non-refundable.~~

~~(d) All fees shall be submitted in the form of certified checks, money orders, or checks from state agencies, municipalities, counties or other political subdivisions of the state made payable to the department~~

~~§267.4. Application Procedures~~

~~(a) Purpose. The purpose of this section is to establish the requirements for an application and the procedures for licensing as a noncommercial pesticide applicator.~~

~~(b) General.~~

~~(1) Unless otherwise indicated, an applicant must submit all required information on official department forms.~~

~~(2) The department must receive the application at least 45 days prior to the date the applicant wishes to take the examination(s).~~

~~(3) The fees must accompany the application form. The department will not review an application until the applicant pays the application and examination fees.~~

~~(4) Failure to complete or correct an application within 30 days of a notice of deficiency will result in the application being denied.~~

~~(5) An application is not considered complete until the required examination(s) have been successfully completed by the applicant.~~

~~(c) General application material. The completed application must contain the following:~~

~~(1) specific information regarding personal data; social security number (used to coordinate licensing information with the Texas Department of Agriculture and the Structural Pest Control Board of Texas); place of employment; license suspensions, revocations, denials; and felony convictions;~~

~~(2) the date of the application;~~

~~(3) a statement that the applicant shall return to the department any licensing certificate and identification card upon the revocation or suspension of the certification;~~

~~(4) a statement that the applicant understands that all fees are nonrefundable unless the processing time is exceeded without good cause as set out in §267.17 of this title (relating to Processing Applications);~~

~~(5) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information material to determine the applicant's qualifications may result in the denial of the application, the denial of the license, or the revocation of any license issued; and~~

~~(6) an original, dated signature of the applicant.~~

~~§267.5. Authorized Pesticide Users~~

~~(a) A governmental employee involved in health-related pest control may not apply pesticides unless the employee:~~

~~(1) is licensed as a noncommercial pesticide applicator by the department and authorized by the license to use the pesticides in the license use categories covering the proposed pesticide use;~~

~~(2) is an aerial applicator involved in health-related pest control licensed by the department in the category in which the pesticide application is made; or~~

~~(3) is a seasonal employee in a mosquito control program and who works under the direct personal supervision of a department licensed pesticide applicator in the vector control category. The licensed pesticide applicator shall confirm the seasonal employee has received training in methods of determining equipment calibration and droplet sizing and the proper equipment calibration and droplet size is used by the seasonal employee. Equipment should be~~

calibrated prior to initial use each season, then four months after initial calibration for the same season, and after every time maintenance effecting calibration or droplet size is performed on the equipment. The licensed pesticide applicator shall certify that the seasonal employee:

- ~~(A) has received training in the required laws and regulations;~~
- ~~(B) has read and understood the label of the product being used at that time;~~
- ~~(C) uses application equipment correctly in accordance with owner's manual instructions;~~
- ~~(D) is familiar with appropriate safety and clean up procedures; and~~
- ~~(E) uses the pesticide selected by the licensed pesticide applicator; and~~

~~(b) Seasonal employee training shall be documented in writing and signed and dated by the licensed pesticide applicator and the seasonal employee and maintained in the main office of the vector control program. Seasonal employee training shall include:~~

- ~~(1) the completion of at least 12 hours of technical classroom training immediately after employment;~~
- ~~(2) the completion of at least 24 hours on the job training while under the personal direct supervision of the licensed pesticide applicator; and~~
- ~~(3) the completion of an additional six hours of technical classroom training within five weeks after the 24 hours of on the job training.~~

~~(c) Licensed pesticide applicators must ensure a copy of the label of the pesticide being used, along with soap, water and disposable towels are in the vehicle used during applications. The vehicle's hazard flashers and flashing beacon, if so accessorized, must be turned on during applications.~~

~~§267.6. Enforcement~~

~~In addition to the enforcement powers of the commissioner found in the Texas Pesticide Laws, Texas Agriculture Code, Chapter 76, Subchapter G, and related statutory provisions, the commissioner or his authorized agent may enter the premises of a governmental entity during normal business hours to:~~

- ~~(1) examine records;~~
- ~~(2) inspect any apparatus subject to the Act;~~

~~(3) inspect pesticide packaging, labels, and labeling information for compliance with the Act; and~~

~~(4) to ensure compliance with this chapter.~~

~~§267.7. Applicator Certification~~

~~(a) The department shall license noncommercial pesticide applicators involved in health-related pest control in the following categories:~~

~~(1) vector control;~~

~~(2) rodent control;~~

~~(3) sanitation; and~~

~~(4) demonstration and research.~~

~~(b) The department may enter into a memorandum of agreement with another state or federal agency for reciprocity in the licensure of a pesticide applicator if standards meet or exceed department standards including annual continuing education requirements.~~

~~(c) Demonstration and research pest control licenses may be issued for any category listed in subsection (a)(1) (3) of this section.~~

~~(d) Noncommercial pesticide applicator licenses shall be issued only to persons who have qualified in the license use categories for which the license is requested.~~

~~(e) The licensed pesticide applicator shall give written notice to the department of any change of address or employment.~~

~~(f) All testing conducted by the department under the authority of the Texas Pesticide Law, Texas Agriculture Code, Chapter 76, and related statutory provisions, shall be designed to cover the information necessary to demonstrate competency to use restricted use, state limited use and general use pesticides in a safe and effective manner. Anyone who makes a passing score on the general pesticide applicator examination and on the appropriate categorical exam(s) will be eligible to be a licensed pesticide applicator in those categories for which a passing score was received and shall be licensed as soon as all other licensing requirements are met.~~

~~§267.8. Noncommercial Pesticide Applicator Recertification~~

~~(a) Each noncommercial pesticide applicator licensed by the department must meet the recertification requirements set out in this section.~~

~~(b) Department approved continuing education activities for recertification include the following:~~

- ~~(1) lectures;~~
- ~~(2) panel discussions;~~
- ~~(3) video or film presentations with live instruction;~~
- ~~(4) field demonstrations; or~~
- ~~(5) other activities approved by the department.~~

~~(c) Only continuing education activities approved by the department may serve as a basis for recertification. All accredited training courses approved by the Texas Department of Agriculture, the Structural Pest Control Board of Texas, and the Texas Agricultural Extension Service will be accepted by the department.~~

~~(d) Prior accreditation shall not be required for recertification courses conducted by Texas Agricultural Extension Service and department employees, provided all other requirements for course content and records are met.~~

~~(e) Continuing education activities shall meet the following criteria if they are to be approved for continuing education credit:~~

~~(1) the activity must have significant educational or practical content to maintain appropriate levels of competency;~~

~~(2) the activity must be conducted by a university, a governmental agency, an association with a membership of 25 or more persons, or a commercial education business;~~

~~(3) the activity must have a record keeping procedure provided by the sponsor which includes a register of who took the course and the credit hours earned;~~

~~(4) the activity must include procedures for verifying participants' attendance as well as comprehension of subject matter presented. These procedures may include, but are not limited to, examinations, post-activity questionnaires, field demonstrations, in-class workbooks or handout materials, and/or question and answer periods to assure participant understanding of the subject matter;~~

~~(5) the activity must be at least one hour in length of net actual instruction time. Round table discussions and more than one speaker for the total of one hour per activity is permitted. No credit will be given for time used to promote the sponsor or other nonrelevant activities. Each credit shall be assigned to the general or category requirements;~~

~~(6) the activity must address one or more of the following:~~

- ~~(A) label and labeling comprehension of pesticides;~~
- ~~(B) safety considerations;~~
- ~~(C) environmental considerations;~~
- ~~(D) pest features;~~
- ~~(E) integrated pest management;~~
- ~~(F) pesticides;~~
- ~~(G) equipment maintenance, calibration and other characteristics;~~
- ~~(H) application techniques;~~
- ~~(I) laws and regulations; or~~
- ~~(J) other presentations approved by the department; and~~

~~(7) the conductor of the activity must certify the activity complies with all applicable federal and state laws, including the American with Disabilities Act (ADA) requirements for access to activities.~~

~~(f) To obtain department accreditation for a recertification activity, the sponsor must submit:~~

~~(1) a completed department provided application form which includes name, address, and phone number of the sponsor and any other appropriate contact person;~~

~~(2) a course outline including the time scheduled for each topic to be covered, and a description of course content;~~

~~(3) the names, addresses, and phone numbers of the instructors, and their credentials;~~

~~(4) the dates, times, and geographic locations of each activity;~~

~~(5) any additional information or material relevant to the activity which is requested by the department; and~~

~~(6) the application and information must be received by the department at least 90 days in advance of the first date of the activity. The department may waive the 90-day provision providing all other requirements are met.~~

~~(g) The department shall approve, reject, or request additional information within 30 days of receipt of the application.~~

~~(h) Each department approved continuing education activity shall be accredited for three years from date of approval. Sponsors who wish to continue accreditation must file for renewal 90 days prior to the end of the three-year period on a form provided by the department, which, in addition to the items listed in subsection f of this section, shall include:~~

~~1) the sponsor's name and phone number;~~

~~(2) the name of activity and any changes in the activity; and~~

~~(3) any changes in the courses or the instructors and their credentials.~~

~~(i) Department personnel may monitor all accredited activities, and all fees charged by the sponsor shall be waived for department personnel who monitor the recertification activity.~~

~~(j) Each licensed pesticide applicator must obtain at least three continuing education units annually. A minimum of one hour must be obtained in general training and a minimum of one hour must be obtained in each category in which the applicator is licensed. One continuing education unit must be in integrated pest management and may serve as general or category specific continuing education.~~

~~(k) Any person who is issued an initial license on or after September 1 in any year and has not been licensed at any time during the preceding nine months shall begin annual recertification requirements the following year and will not be required to obtain any credits between September 1 and December 31 of that year. If credits are obtained during that period, they may be applied to the following year's requirements.~~

~~(l) Documentation of continuing education activity shall include the following:~~

~~(1) name, address, phone number, license number, social security number (used to coordinate licensing information with the Texas Department of Agriculture and the Structural Pest Control Board of Texas), and signature of the department licensed noncommercial pesticide applicator on a department activity roster form or on a department approved activity roster form;~~

~~(2) sponsors of accredited continuing education activities shall:~~

~~(A) at the conclusion of the activity distribute to those applicators who have successfully completed the activity a certificate of completion which shall include the name of the sponsor, the date and name of the activity, and the credit hours earned;~~

~~(B) maintain a roster on department provided forms or in an approved format. A copy of the roster and a report of the continuing education activity must be forwarded to the department withing 14 days after the completion of an activity; and~~

~~(C) each licensed pesticide applicator shall collect and keep certificates of completion of accredited courses. These certificates of completion will be used to document applicator attendance at accredited courses. The department will conduct random audits to achieve compliance with this requirement.~~

~~(m) Continuing education instructors must have one of the following credentials:~~

~~(1) Board Certified Entomologist;~~

~~(2) Bachelors of Science in entomology;~~

~~(3) teaching or work experience determined by the department to be sufficient;~~

~~(4) licensure as a certified applicator by the department, Texas Department of Agriculture or the Structural Pest Control Board of Texas;~~

~~(5) instructors at the Texas Agricultural Extension Service; or~~

~~(6) department personnel.~~

~~(n) A licensed pesticide applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department (and the department will assign the number of credits for the activity) where:~~

~~(1) the activity is held by an out of state sponsor and the following criteria are met:~~

~~(A) the activity contains course content equal to or exceeding Texas standards;~~

~~(B) the activity is sponsored by an institution of higher education, a regional association, a national association, or the state or federal government;~~

~~(C) the activity content is described, including the time allotted to each aspect of the activity, identification of sponsor, instructor's qualifications, instructors name and address, proof of attendance, date, time, and place of the activity; and~~

~~(D) the information required in subparagraphs (A) (C) of this paragraph is submitted to the department within 30 days after completion of the activity.~~

~~(2) the activity is a course approved by a university, college, or other institution of higher education for credit and is in an area directly related to the activities of noncommercial applicators, and the following criteria are met:~~

~~(A) the licensed applicator provides the department with sufficient information describing activity content including the time allotted to each aspect of the activity,~~

identification of sponsor, instructors name and address, proof of attendance, date, time, and place of activity; and

~~(B) the information required in subparagraph (A) of this paragraph is submitted to the department within 30 days after completion of the activity.~~

~~(e) Failure to comply with the annual continuing education requirements for the noncommercial pesticide applicator license issued by the department will:~~

~~(1) result in denial of an applicator's renewal license or certification until the necessary credits for continuing education are successfully completed; and~~

~~(2) require the applicator to take and pass the department examination with a score of 70% or better for general knowledge and for each category in which the applicator seeks certification, if the applicator does not relicense or recertify within one year after the original license expired.~~

~~(p) The department may deny, revoke, or refuse to renew accreditation for any or all courses of a sponsor if the sponsor fails to file a timely activity report, fails to provide or maintain the quality of activity approved by the department, or fails to comply with any other requirements that are a basis for accreditation or that are a part of this chapter.~~

~~(q) A licensed pesticide applicator or sponsor may file a written request for an extension of time for compliance with any deadline in this chapter. Such request for extension, not to exceed 30 days, shall be granted by the department if the applicator or sponsor files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause includes, but is not limited to, extended illness, extended medical disability, or other extraordinary hardship which is beyond the control of the person seeking the extension.~~

~~§267.9. Expiration and Renewal of Licenses~~

~~(a) A licensed pesticide applicator failing to comply with the renewal requirements will not have his or her license renewed until a complete renewal application is received including required continuing education units.~~

~~(b) A person who fails to apply for renewal of a license on or before the expiration date must pay, in addition to the renewal fee, a late fee of \$25.~~

~~(c) Failure to file a timely and complete application for renewal by the license expiration date may subject the applicator to re-test for general pesticide and category specific knowledge. Applications of pesticides by any noncommercial pesticide applicator after the expiration date of the license and when a complete application has not been filed with the department may subject the applicator to penalties and could result in the department's refusal to issue a license for the rest of the licensing year.~~

~~(d) If a complete application for renewal of a noncommercial applicator license is not submitted within one year after the expiration of the license, the license will be deemed to be voluntarily terminated. To reapply for licensure as a noncommercial pesticide applicator, the applicant must meet the requirements for a new license, including testing and any training or continuing education needed at the time of the new application.~~

~~(e) Pursuant to the Texas Pesticide Law, Texas Agriculture Code, §76.113, and related statutory provisions, the department may determine that additional training shall be required of current licensees and may consider changes in technology, pesticide related problems, or the performance of individual applicators in reaching such a determination. If general retraining and/or retesting is required for all applicators in a category, the department will notify all licensees at least six months in advance of the license renewal date. If individual retraining and/or retesting is required as a result of the applicator's performance, the department will give at least 60 days notice and set a time and place of retraining.~~

~~§267.10. Operating without a License~~

~~A governmental employed noncommercial pesticide applicator involved in health-related pest control who operates without a current, valid license from the department is subject to administrative penalties as found in §267.14 of this title (relating to Administrative Penalty).~~

~~§267.11. Records~~

~~(a) Records of all pesticide uses by licensed pesticide applicators are required under provisions of the Texas Pesticide Law, Texas Agriculture Code, §76.114, and related statutory provisions and shall, at a minimum, include the following:~~

- ~~(1) the date and time of day each application was started;~~
- ~~(2) the name of the person or entity for whom the application was made;~~
- ~~(3) the location where the application was made (streets, subdivisions, flight grids or addresses);~~
- ~~(4) the pesticide applied, including:
 - ~~(A) product name;~~
 - ~~(B) EPA registration number;~~
 - ~~(C) rate of application; and~~
 - ~~(D) total volume of product applied.~~~~
- ~~(5) the name(s) of the pest(s) for which the pesticide was applied;~~

~~(6) the purpose of the application (for example: to control pests of public health importance);~~

~~(7) wind direction and velocity and air temperature;~~

~~(8) the FAA "N" number of aerial application equipment or the vehicle license number of ground equipment, or spray unit number; and~~

~~(9) the name of the applicator and his certified pesticide applicator number or, in the case of a seasonal employee in mosquito control programs, the name and certified pesticide applicator number whose license the individual is working under, and the seasonal employee's name.~~

~~(b) The record of each pesticide application, including calibration and droplet size, shall be kept current and maintained at the applicator's principal place of business as designated on the applicator's application or renewal for a pesticide applicator's license. The record for each application, including calibration and droplet size, shall contain all of the information required in subsection (a) of this section. The licensee shall make these records available for inspection by the regulatory agency upon request. The department may examine these records at any time during normal business hours, or, by written request, require the licensee to submit a copy of these records. Records must be kept by the licensee for a period of five years.~~

~~§267.12. Inspection of Equipment~~

~~All application equipment used by noncommercial applicators licensed by the department is subject to inspection by a department inspector at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the inspector shall require the needed repairs or adjustments be made before allowing the use of such equipment.~~

~~§267.13. Complaint Investigation~~

~~(a) Filing of complaints.~~

~~(1) Any person may complain to the department alleging a violation of this chapter.~~

~~(2) A person wishing to file a complaint against a governmental entity, licensee, seasonal employee, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrative office. The mailing address is Texas Department of Health, General Sanitation Division, Vector Control Branch, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6635.~~

~~(3) Anonymous complaints will be investigated by the department.~~

~~(b) Investigation of complaints.~~

~~(1) The department will conduct an initial investigation. The department will prepare a written report. This report will be made available to concerned parties on written request.~~

~~(2) If the department determines that the complaint does not come within the department's jurisdiction, the inspector shall advise the complainant and, if possible, refer the complaint to the appropriate governmental agency for handling such a complaint.~~

~~(3) If the complaint is found to be valid, the department will issue a notice of violation against the accused and an administrative penalty may be proposed.~~

~~§267.14. Administrative Penalty~~

~~(a) If a person violates a provision of the Texas Pesticide Law, Texas Agriculture Code, Chapter 76, and related statutory provisions administered by the department or a rule or order adopted by the department, the department may assess an administrative penalty against the person as provided by this section.~~

~~(b) The penalty may be in any amount not to exceed \$4,000 for all violations related to a single incident.~~

~~(c) In determining the amount of the penalty, the department shall consider:~~

~~(1) the seriousness of the violations, including, but not limited to, the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public;~~

~~(2) the economic damage to property or the environment caused by the violation;~~

~~(3) the history of previous violations;~~

~~(4) the amount necessary to deter future violations;~~

~~(5) good faith efforts to correct the violations; and~~

~~(6) any other matter that justice may require.~~

~~(d) If, after investigation, the department determines that a violation has occurred, the department may issue a Notice of Violation stating the basis for the conclusion that a violation occurred, and may also propose an administrative penalty in consideration of the factors set forth in subsection (c) of this section. The person to whom the notice is sent shall have the opportunity to contest the facts stated in the notice, the amount of the proposed penalty, or both.~~

~~(e) Not later than the 20th day after the date on which the notice is received, the person noticed may either accept the determination of the department made under subsection (d) of this~~

section, including the recommended penalty; or may make a written request for an informal settlement conference; or may make a written request for a formal hearing on the determination. If no request for a settlement conference or hearing is received within the 20 days, the commissioner may enter an order finding that the violation(s) occurred and may assess an administrative penalty.

(f) If the person noticed with the violation accepts the determination of the department, the commissioner shall issue an order finding the violation(s) and ordering the payment of the recommended penalty.

(g) If the person noticed requests an informal settlement conference, the department shall schedule it as soon as practicable. Informal settlement conferences may be in person in Austin or by telephone conference. If an agreement is reached at an informal conference, the commissioner shall issue an order reflecting the agreement. If no agreement is reached at an informal settlement conference, the person noticed may request a formal hearing at the conclusion of the conference. If no agreement is reached at the informal settlement conference and the person noticed fails to request a formal hearing, the commissioner may issue an order finding the violation(s) and ordering the payment of the recommended penalty.

(h) If the person noticed requests a hearing, the hearing shall be held by a hearing examiner designated by the department. The hearing examiner shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation, including recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the recommendations of the hearing examiner, the commissioner by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure Act and Government Code, Chapter 2001.

(i) The department shall mail a copy of the commissioner's order to the person.

§267.15. Use Inconsistent with Label Directions

It is a violation of this chapter for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:

(1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions;

(2) using application techniques or equipment prohibited by the label;

(3) failure to observe worker protection requirements; and

(4) improper storage or disposal of the pesticide or its container.

§267.16. Supervision

~~A licensed pesticide applicator is not required to be physically present at the time and place of a pesticide application to exercise direct supervision, but a licensed pesticide applicator must always be available when and if needed. The licensed pesticide applicator is responsible for any person working under the licensee's direct supervision. All licensed pesticide applicators are responsible for assuring that any person working under the licensee's direct supervision is knowledgeable of the label requirements and rules governing the application of the particular pesticide being used by the individual and all requirements for seasonal employees established in §267.5 of this title (relating to Authorized Pesticide Users).~~

~~§267.17. Processing Applications~~

~~(a) Time periods. The department shall comply with the following procedures in processing applications for licensure and licensure renewal.~~

~~(1) The following periods of time shall apply from the date of receipt of an initial application or a renewal application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:~~

~~(A) letter of acceptance of application for licensing as a licensed pesticide applicator—30 working days; and~~

~~(B) letter of application deficiency or letter of application renewal deficiency—30 working days.~~

~~(2) The following periods of time shall apply from the receipt of the last item necessary to complete the initial application or renewal application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:~~

~~(A) letter of approval for examination—30 working days;~~

~~(B) initial letter of approval for licensure—30 working days;~~

~~(C) letter of denial of licensure—30 working days; and~~

~~(D) issuance of initial license or renewal license—30 working days.~~

~~(b) Reimbursement of fees.~~

~~(1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the~~

administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

~~(2) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.~~

~~(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the administrator, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the administrator. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.~~

~~(d) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in subsection (a) of this section.~~